IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1016 of 1997

with

CRIMINAL REVISION APPLICATION No 604 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

ANSUYABEN VENILAL PATEL

Appearance:

1. Criminal Appeal No. 1016 of 1997
PUBLIC PROSECUTOR for Petitioner

2. Criminal Revision ApplicationNo 604 of 1997
MR HARSHAD J SHAH for Petitioner
K.P.Raval for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/06/98

ORAL JUDGEMENT Per Bhatt,J.

Whether acquittal of the respondent Ansuyaben Patel of the charge of atrocity under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 (' the Act') in criminal case No. 34 of 1994 recorded on 5.9.197 by the learned Special Judge and Sessions Judge, Surat , is justified or not is the sole question raised before us in appeal under section 378 of the Code of Criminal Procedure,1973 (' the Code').

A resume of few material facts giving rise to the appeal by the State and criminal revision application No. 604 of 1997 by the original complainant may be narrated at the outset. Upon complaint ex. 37 lodged on 19.3.1994 at 7 p.m. before the P.S.I ,Rander police station of Surat city by the complainant for an incident alleged to have occurred on 16.3.1994 at 8 a.m. in the school known as Nutan Vidyalaya Primary school , the respondent-original accused came to be charged vide ex. 4 for having committed offence of atrocity against the complainant punishable under section 3 (1)(x) of the Act being criminal case No.34 of 1994, which culminated into acquittal of the accused by the learned Special Judge upon assessment of evidence and appraisal of facts and circumstances and examination of relevant provisions of the Act. In that, the prosecution had alleged that the complainant Devkala and the accused Ansuyaben were employees of the said school . The complainant was a teacher whereas the respondent-accused was administrator and thereby on the management side. The prosecution case further as alleged was that on account of animosity, the accused on 16.3.1994 at 8 a.m. inquired of the time table. Thereafter, the accused asked the complainant as to where and how the time table is lost and thereafter the accused told the complainant "

" This is not residential area of Harijans that you are showing colour of that community". The complainant belongs to scheduled caste and by uttering aforesaid prohibited words , the accused committed an offence punishable under section 3 (1)(x) of the Act,as per the prosecution version.

The prosecution placed reliance on the evidence of the following witnesses;

1 Devkalaben Parmar,ex.14

2 Jagrutiben Patel,ex. ex.31
3 Anjanaben Subhashchandra,ex.35
4 Karansinh Gohil,ex.27
5 Hemlataben Randeria,ex 47 and
6 Bhavnaben Rajput,ex.48

The prosecution also placed reliance on the following documentary evidence:

1 original complaint, ex 37;
2 Certificate of caste of complainant.

The learned Special Judge after having considered the evidence of six witnesses and the documentary evidence,acquitted the accused of the charge of atrocity under section 3 (1)(x) by giving benefit of doubt vide his judgment and order dated 5.9.1997 in criminal case No. 34 of 1994, which is challenged before us.

Incidentally, it may be mentioned that the complainant had given an application before the trial court against the learned Additional Public Prosecutor Miss H.M.Patel on 1.8.1996 in which serious allegations came to be made against her by the complainant. It was inter alia stated that the role of the Additional Public Prosecutor is doubtful and is injurious to the case of the complainant and therefore, prayer was made to the court to transfer her case to other Additional Public Prosecutor. Similarly, an application ex. 51 was also given by the complainant making serious allegations against said Miss Patel. It was stated that the approach of the said Miss Patel in conducting the trial is unjust and unreasonable and therefore, she should be removed from conducting the case. After hearing the complainant side and the learned Additional Public Prosecutor, the first application given on 1.8.1996 came to be rejected on 17.10.,1996 . Again, the second application dated 8.8.1996 at ex.51 was also heard and in course of hearing, it was stated before the court that the Government has considered the request of the complainant against the Additional Public Prosecutor and the matter was referred to the Government in Legal Department and the Government took the view that there was no case for changing the prosecutor as requested by the complainant and directed the prosecution to continue the same Additional Public Prosecutor.

The learned Special Judge has threadbare considered the evidence of the complainant ex. 14 and has found that in view of the enmity and bad relationship and the attendant facts and circumstances,her evidence is not inspiring confidence of the court and more so, when no proper

explanation is tendered in the evidence for lodging FIR late by three days. In paras 17,18 and 19 of the impugned judgment, the learned Special Judge has extensively examined her evidence and has given just and reasonable grounds for not relying on her evidence.

P.W,.No.2 Jagruti Patel ex.31 who was working as teacher in the said school at the relevant time is also not relied on by the trial court for the reasons elaborately enumerated in paras 22 to 25 of the judgment. It is an admitted fact that she also bore a grudge against the accused. That a dispute between the school authorities and management represented by the accused is pending since long and the complainant and some other teachers by filing a case before the Education Tribunal obtained interim order against removal from the posts of teachers before the incident occurred. It is,therefore, an admitted fact that the complainant,P.W.2 Jagrutiben,P.W.3 Anjanaben at. ex.35 ,P.W.5 Hemlataben Patel ex. 47 and P.W.6 Bhavnaben Rajput ex,48 had strained relationship . There was serious animosity between the complainant and her witnesses and the accused.

P.W.3 Anjanaben ex. 35 is also rightly not relied on by the trial court on the grounds stated in greater details in paras 27 and 28 of the judgment. Investigating officer ,PSI Gohil,ex. 27 has in terms admitted that statement of witness Anjanaben had been recorded by him after the complaint ex.37 was read over to her. It is also very clear from the evidence that nothing has been mentioned by her with regard to the incident which happened as per the complainant on 16.3.1994 in the morning.On the contrary, it is borne out from the record that in the police station she stated about some incident of 15.3.1994 which was never the case of the prosecution. In the facts and circumstances, the learned trial Judge has rightly not placed reliance on her evidence.

So is the case of P W.No. 5 Hemlataben ex.47.Not only that, FIR came to be lodged three days after the occurrence of the alleged incident but even statements of some of the witnesses including Hemlataben came to be recorded on 21.3.1994. No reasonable explanation has been given as to how even after lodging of complaint, statements came to be recorded late.It is rightly observed by the learned trial Judge from the evidence of Hemlataben that whatever she has stated herein was not submitted by her before the police and whatever statement was given was not narrated before the court. In this state of affairs, the learned trial Judge rightly not accorded any creditworthiness to the testimony of this

witness. Reasons elaborately narrated by the learned trial Judge in paras 29 and 30 of the judgment are self-explanatory and are justified for not believing the version of this witness.

P.W,.No.6 Bhavnaben Rajput recorded at ex. 48 is also found by the trial court not reliable. It is clearly admitted by her in her evidence that the police recorded her statement after the complaint was lodged by the complainant. The material contradiction and discrepancies in her evidence are exhaustively examined and enumerated by the learned Special Judge in paras 31,32 and 33 of the judgment.

The trial court upon true appraisal of the evidence and examination of the facts and circumstances emerging from the record coupled with delay in lodging FIR by three days and recording statements of some of the important witnesses alleged to be the eye witnesses , by the investigating officer late by two days even after lodging of the complaint late together with the fact that there was animosity between the complainant and other teachers examined and relied on by the prosecution on one hand and the accused being admittedly in charge of the management of the said school, recorded the order of acquittal by the impugned judgment and order which, in our opinion, cannot be said to be in any way perverse or unreasonable. The view taken by the learned trial Judge after extensively examining the testimonial collection and exhaustively appreciating the factual scenario emerging from the record is possible and plausible view. It cannot be contended that the view taken by the learned Judge is impossible or is totally perverse and based on misreading of evidence.

In this connection, relevant proposition of law referable to appreciation of merits of acquittal appeal under section 378 of the Code may be stated..It is a settled proposition of law that appellate court cannot convert or reverse acquittal order merely on the ground that a different view is possible from the set of proved facts on record. If view of the trial court upon assessment of the evidence is one of possible views, then, acquittal cannot be converted into conviction by the appellate court exercising its powers under section 378 merely on the ground that another view is possible.

Provisions of section 378 are extensively explored and very well examined in number of judicial pronouncements. In Antar Singh vs,. State of M.P.,AIR 1979 SC 1188 it has been clearly propounded that where two views on

evidence are reasonably possible,and the trial court has opted for one favouring acquittal,the High court should not disturb the same merely on the ground that if it were in the position of the trial court, it would have taken the alternative view leading to conviction of the accused. It is,therefore, very clear that the appellate court in appeal under section 378 has to appreciate and consider the fetters very well settled.

The Honourable Apex court in Tara Singh vs. State of M.P.,AIR 1981,SC,950, has also clearly propounded and has reiterated the celebrated proposition of law in case of examination of the merits of acquittal appeal under section 378.It is clearly observed in the said decision that if two views on evidence are reasonably possible, one supporting acquittal and the other indicating conviction,.the High court should not in such situation reverse the order of acquittal recorded by the trial court. This salutary principle propounded by the Honourable Apex court cannot be overlooked by the appellate court while exercising powers under section 378 of the Code.

When the court is satisfied that evaluation of the evidence by the trial court is not suffering from any perversity, illegality or any manifest error of misreading of evidence, interference in appeal under section 378 in case of acquittal is not warranted. If appellate court is satisfied that the view taken by the trial court entertaining the sessions case and evaluating and appraising testimonial collections and documentary evidence of prosecution is reasonably possible and justified, it is an end of the matter. Merely because another view is possible or even if the High court were to take a different view while exercising power under section 378 is no ground for interfering in acquittal appeal. This proposition of law is also very much reinforced by the ratio propounded by the Honourable Apex court in Dinanath Singh vs State of Bihar, AIR 1980 SC 1199.

Similarly,in Babu vs.State of U.P., AIR 1983 SC 308, the Honourable Supreme court has taken identical view. It is clearly held that in appeal against acquittal, if two views are possible, the appellate court should not interfere with the conclusion arrived at by the trial court unless the conclusions are shown to be not possible. If the findings reached by the trial court cannot be said to be unreasonable, the appellate court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on

record,because the trial court has advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused used is not weakened by his acquittal. The appellate court should,therefore, be slow in disturbing the finding of fact of the trial court more so when two views are reasonably possible on the evidence on record. It is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it.

In Chimanbhai Ukabhai vs. State of Gujarat,AIR 1983, SC 484, the Honourable Supreme court has observed as under:

"The appellate court while dealing with an appeal against the order of acquittal has full power to review at large the evidence on which the order of acquittal is founded and to reach a conclusion that upon such evidence the order of acquittal should be reversed .Howeve,in exercising that power, the appellate court should give proper weight and consideration to the following matters: (1) the views of the trial judge as to the creditability of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial ; (3) the right of the accused to the benefit of any doubt and (4) the slowness of the appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses which finding would not certainly be disturbed if two reasonable conclusions can be reached on the basis of the evidence on record."

The Honourable Supreme court in above case has placed reliance on the following decisions:

S.H.Kemkar v.State of Maharashtra,AIR 1974 SC 1153;
Bhimsingh vs. State of Maharashtra,AIT 1974 SC 286.

In view of our assessment and appraisal of the evidence by the trial court which was placed before us by the learned Additional Public Prosecutor in the course of hearing at admission stage and after having heard the learned Additional Public Prosecutor together with factual scenario emerging from the record of the present case, coupled with the aforesaid proposition of law propounded and dealt with by us ,we have no hesitation in finding that the acquittal recorded by the trial court is just and possible view and,therefore, we confirm it and dismiss the acquittal appeal as well as the revision

application of the complainant. Incidentally, on the proposition of law, Mr. Shah for the complainant petitioner was also heard, though not required when acquittal appeal is filed.

In the net result, the acquittal appeal and the revision application are dismissed at the threshold.
